



MULTISTATE TAX COMMISSION

MEETING NOTES

MTC Work Group – Sales Taxation of Digital Products

June 5, 2025

I. Introductions and Review of Notes from April 3, 2025 Work Group Meeting

Tim Jennrich (Washington), Chair of the Work Group, convened the meeting.

Tim stated that the group's process guidelines and notes from the April 3 meeting were posted on the project page.

II. Initial Public Comment

Jennrich invited any initial public comments. There were none.

III. Report on Definitions Study Group

Tim moved to discussion of the MTC definitions study group and asked Chair of that study group, Ray Langenberg (Texas), for an update. Ray asked Jonathan White (MTC) to provide the update. Jonathan briefly described the events of the two study group sessions that have occurred since the work group was last updated at the MTC in-person meetings in Spokane.

Jonathan stated the group has considered Ray's novel approach at great length and has dialed in the language of that proposal greatly. Jonathan stated that the discussion of that proposal may be nearing the point where it ceases being productive, but that the minimal human involvement aspect would likely receive more discussion.

Jonathan stated that the group intends to move on to considering some state approaches soon. He stated that beginning with the next session, which is next week, the group will start to critique Ohio's approach and South Dakota's approach. Jonathan mentioned that the group expects a writeup on Utah's approach as well, and the group will critique that one. Jonathan noted that with Ohio and South Dakota to go first, there would likely not be time at the next study group session to get to Utah's approach at that time.

Jonathan noted that enough discussion had taken place to allow MTC staff to begin drafting language for the study group's eventual report, so that would begin soon. He noted that the work group as a whole would get a chance to review that report when it came.

Ray added a bit about the procedure of things at the work group level, noting that the work group will get the opportunity to opine on whatever comes out of the study group. He reiterated the study group could not do any deliberation or voting.

Tim added that the Washington writeup was in process and would be coming soon too. He noted there were some changes made this legislative session that were important to include in the writeup. He expects the Washington writeup to be ready for discussion by the next session or maybe the next.

Tim discussed the Streamlined project noting the Streamlined group was at an early point and still determining what products to define. He asked that if members have any ideas of products to discuss or define under that project to provide those to Alison Jares from the Streamlined Sales Tax Governing Board.

Alison Jares (Streamlined Sales Tax Governing Board) spoke about the Streamlined project, saying they were at the early stages and they wanted feedback and input about what paths to take. She encouraged involvement from all states, not just Streamlined states.

IV. Possible Consideration of Sourcing Issue

Tim then moved on to sourcing, stating this is the next frontier after the definitions study group's work is done. He referred to the results of a previous survey of the work group about what to work on next and stated that sourcing got some support and makes sense to move to next. He provided that the plan as of now is to find out what states are doing, identify sourcing issues policymakers need to know about regarding digital products, address multiple points of use (MPU), and address look federal sourcing provisions, including those from the Mobile Telecommunications Sourcing Act, and the Digital Goods and Services Tax Fairness Act (a proposal that was not enacted). Tim asked if there was any initial input on what must be looked at. There was none, but he asked if there were any later, to contact him or MTC staff.

Tim then moved to the initial step, a survey of other states' rules, and stated that because the rules from the Streamlined Sales Tax Governing Board cover 24 states, it makes sense to hear about those rules. He turned to Alison Jares for her description of the Streamlined sourcing rules and their recent work.

Alison Jares (Streamlined Sales Tax Governing Board) described the sourcing under Streamlined as destination sourcing. Sales are sourced to where the customer takes possession, or makes first use of a service, or takes possession or makes first use of a digital good. She stated there is a hierarchy of rules to go through to determine this location. She also described the Streamlined provision of due diligence and liability relief if they do what they need to do and keep records. Backing this up are boundary and rate databases.

Tim followed up stating that with digital products, the location is often not known at the time of the sale sometimes, so the sourcing often bypasses the initial rule of actual destination location, moving down the hierarchy to books and records. Alison added that sellers making large sales, over and over to the same buyers often have their buyers' information.

Alison then described the issue of situations where there is no need for a physical address, noting this was a tough issue. She described how Streamlined addressed this and changed its liability relief provisions, requiring the seller to at least request information for sourcing, including the address or nine-digit zip code, and requiring the seller to have the five-digit zip code, at a minimum. Alison noted that the origin of the sale is the ultimate backup, but that Streamlined does not want that to be the immediate default or backup.

Josh Pens (Colorado) asked about the last resort and how that is working. He asked if that looked to the location of the transaction, whether that working for content delivery companies, are whether sellers are tracking which server something came from, or some similarly granular tracking. He also asked if there are additional cascading rules.

Alison responded there are no additional cascading rules and that has not been a complaint. She noted the big sellers probably have the buyer's full address anyway because they do enough business with them. She stated this could be the buyer's official or permanent location rather than the exact place where something is being used.

Mark Nebergall (Software Finance & Tax Executives Council) said the last rung on the hierarchy is rarely reached and pointed out that the Digital Goods and Services Tax Fairness Act has different rules than Streamlined and gives the seller some choices. Mark said he knows of no problems with the Streamlined rules with specified digital products and has not heard of any situations where the last resort has come up.

Ray Langenberg (Texas) asked if the Streamlined rules differentiate between tangible personal property, services, and digital products. Alison said they do not, in general, but there is some slightly different language for the three.

Ray asked about origin sourcing. Alison said there is one state that uses it but Streamlined only allows that for intrastate sales. Mark noted the SSUTA has a provision to allow states to use a version of origin sourcing, which was done to attract Texas.

Ray asked about the multiple points of use provision under Streamlined, asking what the politics of that were and why it was withdrawn. Mark said there were issues with the purchaser side of it on use tax.

Alison covered the use of their databases to produce obligations for due diligence on sellers and provision of liability relief. She noted that sellers, buyers, and states all want fast and accurate tax determination and that is what the databases provide. She described the different ways the databases are used and the usefulness of the databases for compliance. She stated that use of the database helps because it gives a result and will work for other states even if the sourcing rules themselves are a little different.

Mia Strong (Louisiana) asked about sourcing and related it to bundling. She raised the situation where different parts of a bundle are sourced differently. She asked how does this would be sourced. Alison noted it was a good question and stated that the exact question had not been considered. She noted that in general the bundle is looked at as a whole, and so, the sourcing would be based on the entire bundle.

Mark talked about the new Streamlined rules that allow the use of the highest tax rated zip code. He stated that the rules create a situation where you might buy it physically from the low rate area, and in this situation you pay the low rate. However, the same person could buy and download it, but if the seller does not get all the information, the sale would be taxed at the higher rate. He stated this creates an Internet Tax Freedom Act issue.

Carson (unknown) raised the situation of two sellers where one tries harder than the other to get the information. Alison said you have to at least request the nine-digit zip code, and that the try harder will not be relevant as long as the seller asks. Carson followed up by asking about what counts as asking, providing that maybe one just asks and the other requires it. Alison said the request does not have to be mandatory, but cannot be labeled as optional. If a seller made it mandatory that would be that seller's choice. Alison noted this was a good question.

Michael Fatale (Massachusetts) asked about the Streamlined rules and electronic transactions and whether it was first use. Alison said it was taking possession or making first use. Michael asked how first use is determined when a business purchases software that is being used simultaneously.

Mark stated that software is a bad example for MPU because it is tangible personal property in so many states, so it is only in one location at the same time. Mark said services was a better example to ask about MPU. He said the primary problem MPU was to solve was use tax liability. Alison added the seller might not have any information about the locations where the product will be accessed. Michael said this seems to mean they will move down the hierarchy pretty quickly. Alison agreed.

Tim added that the seller typically does not know at the time of the sale where it will be taken possession of.

Michael said he does not see how the seller would ever know where the first use would be. Alison agreed and said the buyer might not even know, so it often defaults to the address the seller has for that purchaser.

Mark said that the seller will often work with the buyer to help relieve the use tax and credit complications just as a matter of doing good business with buyers.

Michael said they have the MPU rules in Massachusetts and that what Mark is saying rarely happens rarely there. He stated that use of the MPU certificate is optional and it is rare to see it used. Michael stated that what typically happens is the tax is just charged and paid and then a refund is requested after the fact. Tim stated that is what they are seeing in Washington as well.

Darcy Kooiker (EY) raised the situation where the seller knows the buyer has multiple locations and knows those locations but the fee is one lump sum not broken up based on the buyer's locations. She asked if in this case the seller defaults to the central location? Alison asked whether the seller knows for sure it is going to be used in different locations. She stated that when she was in South Dakota, they would put it back on the buyer to make clear the buyer was going to use the product in different states. Alison stated it was not always on the seller. It is based on what the seller knows based on information provided to them.

Tim moved on to adjourn the meeting.

V. New Business

Tim moved to discuss any new business. There was none.

VI. Adjourn

Tim then adjourned the meeting.